

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MARLENE JOHANSEN

Plaintiff and Counterclaim
Defendant

Civil Action No. 04-11789-RCL

v.

UNITED STATES OF AMERICA

Defendant and Counterclaim
Plaintiff

v.

TIMOTHY BURKE

Counterclaim Defendant

TIMOTHY BURKE'S MOTION FOR SUMMARY JUDGMENT

Now comes the Counterclaim Defendant, Timothy Burke ("Burke"), to move this honorable Court pursuant to Rule 56 of the Federal Rules of Civil Procedure to enter judgment against the United States (the "Counterclaim Plaintiff" or the "United States"). As grounds therefore the Counterclaim Defendant states that there are no material facts in dispute. The facts of this matter establish that Burke is entitled to judgment as a matter of law.

In support of this motion, the Counterclaim Defendant refers to his Answer, his Statement of Undisputed Facts, his Affidavit and the attached Memorandum of Law.

WHEREFORE, the Counterclaim Defendant requests that the Court:

1. Enter a judgment for him against the United States;
2. Schedule a hearing on this Motion;
3. Award reasonable attorney's fees and costs; and
4. Grant such further relief as deemed necessary by the Court.

Timothy Burke
by his attorney

/s/ Melissa Halbig
Melissa Halbig
BBO# 655826
400 Washington Street
Braintree, MA 02184
(781) 380-0770

Dated: August 1, 2005

**Counterclaim Defendant's Certificate of Compliance
with Local Rule 7.1.**

Counterclaim Defendant's counsel hereby certifies that her office telephoned counsel for the Defendant, Stephen Turanchik, on Thursday, July 28, 2005. No agreement can be reached on narrowing the issue before the Court.

Certificate of Service

I hereby certify that a true copy of the above document was served upon each attorney of record via first class mail, postage prepaid on August 1, 2005 to the following counsel of record:

Stephen Turanchik
Trial Attorney, Tax Division
Department of Justice
P.O. Box 55
Ben Franklin Station
Washington, D.C. 20044

/s/ Melissa Halbig
Melissa Halbig